

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James Roosevelt McCray,)	
)	
Plaintiff,)	
)	Civil Action No. 8:22-cv-1477-BHH
v.)	
)	
South Carolina Department of)	<u>ORDER</u>
Corrections; Shepherd, <i>Associate</i>)	
<i>Warden</i> ,)	
)	
Defendants.)	
_____)	

This matter is before the Court upon Plaintiff's pro se complaint filed pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary determinations. On June 14, 2022, Magistrate Judge Jacquelyn D. Austin issued a Report and Recommendation ("Report") outlining the issues and recommending that the Court summarily dismiss South Carolina Department of Corrections as a Defendant because it is not a "person" amenable to suit under § 1983.

Attached to the Magistrate Judge's Report was a notice advising Plaintiff of his right to file written objections to the Report within fourteen days of being served with a copy. On June 30, 2022, Plaintiff filed objections, reiterating his allegation that South Carolina Department of Corrections is not following its own policies and rules (ECF No. 28 at 4), but nowhere in his objections does Plaintiff respond to the Magistrate Judge's finding that South Carolina Department of Corrections is not a "person" amenable to suit under § 1983. Additionally, a review of the docket indicates that Plaintiff has now filed two motions to amend his complaint to name Bryan P. Stirling as the Defendant liable for the South

Carolina Department of Corrections in apparent recognition of the fact that South Carolina Department of Corrections is not a proper Defendant to this action.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Here, after review, the Court overrules Plaintiff's objections, and the Court agrees with the Magistrate Judge that South Carolina Department of Corrections should be summarily dismissed as a Defendant in this action as it is not a "person" amenable to suit under § 1983. Accordingly, the Court adopts the Magistrate Judge's Report (ECF No. 23) and incorporates it herein; and the Court dismisses South Carolina Department of Corrections as a Defendant. The Court notes that Plaintiff's recently filed motions to amend his complaint remain pending before the Magistrate Judge along with Defendant Shepherd's motion for summary judgment.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

December 19, 2022
Charleston, South Carolina